

# PUBLIC GUARDIANSHIP

## OVERVIEW

*PUBLIC GUARDIANSHIP SUBCOMMITTEE*

*JANUARY 22, 2013*

*JAN PAUL, RESEARCH DIVISION*

# **GUARDIANSHIP**

A guardian is court-appointed to make decisions on behalf of an individual (“ward”).

Criteria: Respondent lacks sufficient capacity to manage own affairs or to make or communicate important decisions regarding person, family, or property, due to mental illness, mental retardation, inebriety, disease, injury, or similar cause or condition.

G.S. 35A-1101(7); G.S. 35A-1112(d).

# DISINTERESTED PUBLIC AGENT

Clerk may appoint “disinterested public agent” to serve as guardian. G.S. 35A-1213(d)

Appointment must be in ward’s best interest and guardian’s service must not be a conflict of interest.



# LEGISLATIVE CHANGES

Rowan County Superior Court case – 2010.

S.L. 2011-264 (HB 916): “Statewide Expansion of 1915(b)/(c) Medicaid Waiver.

S.L. 2012-151 (SB 191): “LME Governance.”

- Amended definition of “Disinterested public agent.”
- Amended provisions of G.S. 35A-1213 regarding qualifications of guardians and resignation of guardian.

S.L. 2013-258 (HB 543): “Guardianship Roles of MH/DD/SA Providers.”

- Amended G.S. 35A-1213, “Qualifications of guardians.”

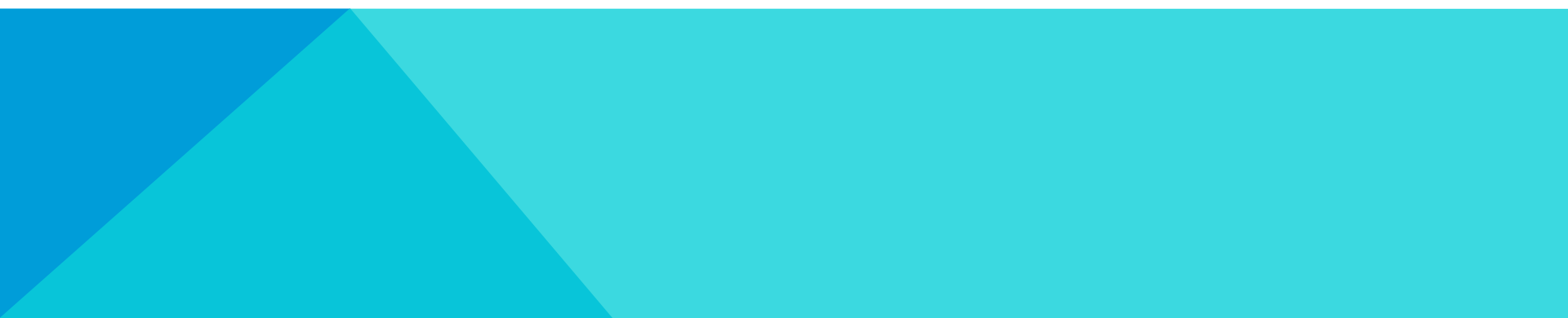
# CURRENT LAW

## § 35A-1213. Qualifications of guardians.

(a) The clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons.

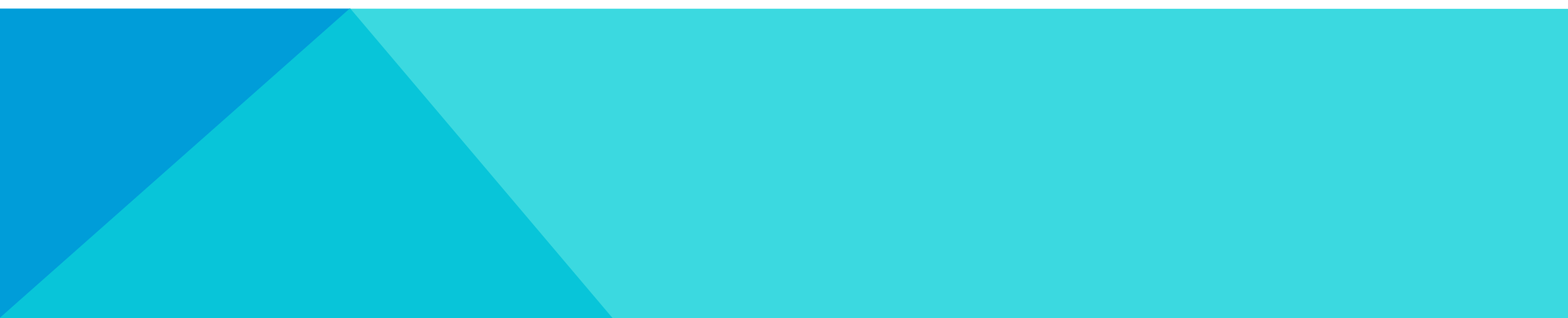
(b) A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship.

Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk shall require a nonresident guardian of the estate or a nonresident general guardian to post a bond or other security for the faithful performance of the guardian's duties. The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties.



## **CURRENT LAW G.S. 35A-1213 (CONTINUED)**

(c) A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities. A corporation shall meet the requirements outlined in Chapters 55 and 55D of the General Statutes. A corporation will provide a written copy of its charter to the clerk of superior court. A corporation contracting with a public agency to serve as guardian is required to attend guardianship training and provide verification of attendance to the contracting agency. A corporation shall not be appointed as guardian for any individual to whom it provides mental health, developmental disabilities, or substance abuse services for compensation as part of a contractual or other arrangement with a local management entity (LME), including an LME that has been approved to operate the 1915(b)/(c) Medicaid Waiver.



## **CURRENT LAW G.S. 35A-1213 (CONTINUED)**

- (d) A disinterested public agent who is appointed by the clerk to serve as guardian is authorized and required to do so; provided, if at the time of the appointment or any time subsequent thereto the disinterested public agent believes that his role or the role of his agency in relation to the ward is such that his service as guardian would constitute a conflict of interest, or if he knows of any other reason that his service as guardian may not be in the ward's best interest, he shall bring such matter to the attention of the clerk and seek the appointment of a different guardian. A disinterested public agent who is appointed as guardian shall serve in that capacity by virtue of his office or employment, which shall be identified in the clerk's order and in the letters of appointment. When the disinterested public agent's office or employment terminates, his successor in office or employment, or his immediate supervisor if there is no successor, shall succeed him as guardian without further proceedings unless the clerk orders otherwise.

## **CURRENT LAW G.S. 35A-1213 (CONTINUED)**

(e) Notwithstanding any other provision of this section, an employee of a treatment facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an inpatient in or resident of the facility in which the employee works; provided, this subsection shall not apply to or affect the validity of any appointment of a guardian that occurred before October 1, 1987.

(f) An individual who contracts with or is employed by an entity that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve as a guardian for a ward for whom the individual or entity is providing these services, unless the individual is one of the following:

(1) A parent of that ward.

(2) A member of the ward's immediate family, a licensed family foster care provider, or a licensed therapeutic foster care provider who is under contract with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services and is serving as a guardian as of January 1, 2013. For the purposes of this subsection, the term "immediate family" is defined as a spouse, child, sibling, parent, grandparent, or grandchild. The term also includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

(3) A biologically unrelated individual who was serving on March 1, 2013, as a guardian without compensation for guardianship services.



# **PAYMENT FOR PUBLIC GUARDIANSHIP SERVICES**

G.S. 35A-1269

G.S. 35A-1241(b)

2011 Budget Bill [S.L. 2012-142 (H950),  
Sec. 10.25(w1)]

Social Services Block Grant (SSBG)

